U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10832070

Date: AUG. 12, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a petroleum engineer, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner asserts that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

Furthermore, while neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

The Director concluded that the Petitioner qualifies as a member of the professions holding an advanced degree. The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we agree with the Director that the Petitioner has not sufficiently demonstrated eligibility under *Dhanasar*'s three-prong analytical framework.

A. Substantial Merit and National Importance of the Proposed Endeavor

The first prong relates to substantial merit and national importance of the specific proposed endeavor. *Dhanasar*, 26 I&N Dec. at 889. In his initial cover letter, the Petitioner claimed that "his work is devoted to research and development of technology for producing oil and gas and is in the national interest of US to attain self-sufficiency in energy resources." Moreover, he stated that his "scientific contributions in the field of Artificial Lift Technology can substantially improve the oil production and reduce the operation costs."[4] The Petitioner provided reference letters discussing the importance of artificial lift technology. For example, "[i]n the United States Artificial lift is used in nearly all oil wells" and "[s]ome of these wells [] need artificial lift to be installed at the early stage of the well life" [redacted], "[c]urrently, there are nearly 1,000,000 producing well[s] in the world" and "[m]ore than 90% of these are on some form of artificial lift for enhanced production" [redacted], and "[m]ost of the wells in the U.S. produce from unconventional reservoirs" and "[t]he rapid decline rates in unconventional resources necessitate artificial lift much sooner in the life of the well, often within months after the well is put on production" [redacted]. The record also contains articles and documentation relating to artificial lift technology, shale oil and gas resources, and computational fluid dynamics. Here, the Petitioner has sufficiently shown the substantial merit and national importance of his proposed endeavor. Accordingly, the Petitioner satisfied the first prong of the *Dhanasar* analytical framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the petitioner in order to determine whether he or she is well positioned to advance the proposed endeavor. *Dhanasar*, 26 I&N Dec. at

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[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] On appeal, the Petitioner further defines artificial lift:

> Artificial lift refers to the use of artificial means to increase the flow of liquids, such as crude oil or water, from a production well. Generally, this is achieved by the use of a mechanical device inside the well (known as pump or velocity string) or by decreasing the weight of the hydrostatic column by injecting gas into the liquid some distance down the well. Artificial lift is needed in wells when there is insufficient pressure in the reservoir to lift the produced fluids to the surface, but often used in naturally flowing wells to increase the flow rate above what would flow naturally. The produced fluid can be oil, water or a mix of oil and water, typically mixed with some amount of gas. Essentially, any liquid-producing reservoir will have a 'reservoir pressure' – some level of energy or potential – that will force fluid (liquid, gas or both) to areas of lower energy or potential.

890. The record includes documentation of his curriculum vitae, academic credentials and awards, published materials, conference papers, patent experience, peer review activity, and memberships. He also offered recommendation letters and evidence of citations to his research. For the reasons discussed below, the evidence in the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

At the time of filing, the Petitioner provided a job letter reflecting his employment as a "Temporary Worker" at [redacted] in the [redacted] since September 2017, approximately one month after receiving his doctorate degree. According to his curriculum vitae, [redacted] employs him as a research assistant. However, the Petitioner has not shown that the remaining time in his temporary position is sufficient to render him well positioned to advance his proposed endeavor. On appeal, the Petitioner submits an October 2019 job letter from [redacted] engineer manager at [redacted] indicating that the Petitioner "recently joined" the company and discussed the Petitioner's roles, responsibilities, and achievements. In addition, the Petitioner offers two authored scholarly articles published in 2019, after he filed his petition.[5] The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). As the evidence relates to events occurring after he filed his petition in December 2017, we will not consider the documentation in this proceeding.

In letters supporting the petition, the references discussed the Petitioner's previous research but did not demonstrate how such work qualifies the Petitioner for being well positioned to advance his endeavor.[6] For example, [redacted] stated that the Petitioner's "PhD dissertation has very interesting ideas that have potential bearing and influence to the oil industry," and "[the Petitioner] is working with me to develop a new [redacted] design." Although [redacted] discussed the potential of the ideas in the dissertation and indicated work on developing a [redacted] design, he did not establish that the ideas or designs have been implemented in the field, representing a record of success or progress rendering him well positioned to advance his proposed endeavor.

Similarly, [redacted] indicated that the Petitioner "explored how pressure inside a pressurized vessel decreases with time when a compressible fluid is released through an exit valve from the interior," and "we were able to construct a general methodology for experiment determination of loss coefficient in a wide range of systems under different thermodynamic conditions." [redacted] did not show whether this research has been utilized or applied in the field beyond stating that "we are preparing a manuscript describing our findings in a research article to be submitted in a journal." [redacted] did not show how the Petitioner's work has served as an impetus for progress or generated positive discourse in the field, or otherwise signifies a record of success in the field.

Likewise, [redacted] stated that he reviewed one of the Petitioner's research articles relating to "comprehensive combination of theoretical, experimental and numerical studies" and his "team is considering [the Petitioner's] study for potentially becoming part of future [redacted] of technology and tool design development." Although he asserts the possibility of

[5] In response to the Director's request for evidence (RFE), the Petitioner also offered six "[r]ecent publications and manuscripts submitted as evidence of his current research"; however, the record does not reflect that the manuscripts were actually published, let alone published prior to the filing of the petition.

[6] Although we discuss a sampling of letters, we have reviewed and considered each one.

incorporating the technology at the company, he did not demonstrate how the potential use of the study at a business reflects the Petitioner's history of success in the field.

In addition, [redacted] stated that "[o]ne great example of his impact would be his work using [redacted]," and the Petitioner "designed an excellent [redacted] model to accurately simulate the [redacted]s, which was then scientifically validated and successfully determined to generate results with matching within industrially acceptable accuracy." However, the letter does not provide specific examples indicating that the Petitioner's work has affected the field or otherwise constitutes a record of success.

The record also contains a letter from [redacted], Office of Research Commercialization stating that the Petitioner "is listed as an inventor on the [redacted]s [redacted], 2016," and "[redacted] is currently marketing the technology." Notwithstanding the absence of a patent issuance or approval, a patent recognizes the originality of an invention but does not necessarily show its application in the field. Besides [redacted]'s attempt to market the technology, the Petitioner has not demonstrated the significance of this innovation in the field, representing a record of success rendering him well positioned to advance his proposed endeavor.

As it relates to the citation of his published articles and conference presentations, the Petitioner initially provided a self-compiled document claiming that three of his materials have been cited 11 times (3 - SPE Artificial Lift Conference & Exhibition, 1 – *Journal of Petroleum Science Engineering*, 7 – URTec Unconventional Recourses Technology Conference). In the RFE response, the Petitioner submitted information from Google Scholar indicating that his materials have been cited 27 times with at least 7 citations occurring in publications after he filed his petition. However, the Petitioner has not shown that the number of citations received by his three works or the level of interest they generated is sufficient to demonstrate that he is well positioned to advance his endeavor.

As it pertains to the Petitioner's education, while his degrees render him eligible for the underlying EB-2 visa classification, he has not shown that his academic accomplishments by themselves are sufficient to demonstrate that he is well positioned to advance his proposed endeavor. We look to a variety of factors in determining whether a petitioner is well positioned to advance his proposed endeavor and education is merely one factor among many that may contribute to such a finding.

Regarding his peer review activity, the Petitioner provided evidence reflecting his service on editorial boards for journals, such as *Petroleum and Environmental and Biotechnology* and *Petroleum and Petrochemical Engineering Journal*. However, the Petitioner did not further explain the extent of his service, the prestigious nature of these journals, and how such service constitutes a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor. Similarly, the record contains documentation of his memberships with professional associations, such as the Society of Petroleum Engineers and the American Rock Mechanics Association. The record does not include evidence demonstrating the significance or level of distinction of these memberships in his field. Nor has the Petitioner established that his memberships are sufficient to show a record of success in his research or a level of interest in his work from relevant parties signifying that he is well positioned to advance his research.

The record demonstrates that the Petitioner has published research, but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not sufficiently demonstrated that his published work has served as an impetus for progress in the field or that it has generated substantial positive discourse in the industry. Nor does the evidence otherwise show that his work constitutes a record of success or progress in advancing research relating to artificial lift technology.

Because the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework. Accordingly, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of his eligibility under the third prong outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we conclude that he has not demonstrated that he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.